



THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

Law Day Luncheon 2016

Miranda: More than Words

See page 2 for more details.

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The Delaware State Bar Association Presents

Law Day Luncheon 2016

Tuesday, May 17, 2016 • 12:00 noon

Gold Ballroom • Hotel du Pont • Wilmington, Delaware



Keynote Address by Paulette Brown

President, American Bar Association

Paulette Brown, Partner and co-chair of the firmwide Diversity & Inclusion Committee at Locke Lord LLP, is president of the American Bar Association.

Brown has held a variety of leadership positions within the ABA. She has been a member of the ABA House of Delegates since 1997 and is a former member of the ABA Board of Governors and its Executive Committee, as well as the Governance Commission. While serving on the Board of Governors, Brown chaired the Program, Planning and Evaluation Committee. Brown has served on the Commission on Women in the Profession and was a co-author of "Visible Invisibility: Women of Color in Law Firms." Brown also chaired the ABA Council on Racial and Ethnic Justice (now Coalition on Racial and Ethnic Justice) and is a past co-chair of the Commission on Civic Education in our Nation's Schools. Brown served on the Section of Legal Education's Council on Legal Education and Admissions to the Bar and its Executive Committee. Brown joined the ABA Young Lawyers Division in 1976. She became active in the Section of Litigation in 1995, which has continued to be her section "home" ever since. She is a former member of The Fund for Justice and Education (FJE), FJE President's Club and a Life Fellow of the American Bar Foundation.

Brown has held many positions throughout her career, including as in-house counsel to a number of Fortune 500 companies and as a municipal court judge. In private practice, she has focused on all facets of labor and employment and commercial litigation. Brown has been recognized by the National Law Journal as one of "The 50 Most Influential Minority Lawyers in America" and by the

New Jersey Law Journal as one of the "prominent women and minority attorneys in the State of New Jersey." She has received the New Jersey Medal from the New Jersey State Bar Foundation and currently serves on its Board of Trustees.

Brown has repeatedly been named as a New Jersey Super Lawyer and by *US News* as one of the Best Lawyers in America in the area of commercial litigation. In 2009, Brown was a recipient of the Spirit of Excellence Award from the ABA Commission on Racial and Ethnic Diversity in the Profession. In 2011, she was honored with the Margaret Brent Women Lawyers of Achievement Award by the ABA Commission on Women in the Profession. Brown, who served as President of the National Bar Association from 1993-1994, received the NBA's highest honor, The C. Francis Stradford Award, in 2015. Brown earned her J.D. at Seton Hall University School of Law and her B.A. at Howard University.

Awards Presentation

Liberty Bell Award

Presented to

John G. Moore, Sr.

United Way of Delaware

Community Service Award

Presented to

The Honorable Mary M. McDonough

Court of Common Pleas

Myrna L. Rubenstein Professional Support Recognition Award

Presented to

Nancy Osborn

Law Day Luncheon • Tuesday, May 17, 2016 • 12:00 noon

Please reserve _____ place(s) for me at the Tuesday, May 17, 2016 Law Day Luncheon to be held at 12:00 noon at the Hotel du Pont.

\$55/per person. Please include names and DE ID numbers of all attendees with response.

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The *Bar Journal* is the independent journal of the Delaware State Bar Association. It is a forum for the free expression of ideas on the law, the legal profession and the administration of justice. It may publish articles representing unpopular and controversial points of view. Publishing and editorial decisions are based on the quality of writing, the timeliness of the article, and the potential interest to readers, and all articles are subject to limitations of good taste. In every instance, the views expressed are those of the authors, and no endorsement of those views should be inferred, unless specifically identified as the policy of the Delaware State Bar Association.

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THE JOURNAL

OF THE DELAWARE STATE BAR ASSOCIATION

FEATURES

- 2 2016 Law Day Luncheon Announcement and Registration
- 26 Photographs from the Toast and Roast of Rina Marks
- 27 2016 Bench and Bar Conference Save the Date

COLUMNS

- | | | | |
|----|--|----|-----------------------------|
| 4 | President's Corner | 16 | DSBIS Update |
| 6 | Editor's Perspective | 18 | Access to Justice Spotlight |
| 10 | Tips on Technology | 20 | DE-LAP Zone |
| 12 | Commission on Law & Technology:
Leading Practices | 22 | Book Review |
| 14 | Ethically Speaking | 24 | A Profile in Balance |
| | | 30 | Judicial Palate |

DEPARTMENTS

- | | | | |
|----|------------------------------|----|----------------------|
| 8 | Calendar of Events | 29 | Disciplinary Actions |
| 9 | Section & Committee Meetings | 29 | Of Note |
| 28 | Bulletin Board | | |

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PRESIDENT'S CORNER

By Richard A. Forsten, Esquire

Check Your Politics at the Door

So far, 2016 is shaping up to be the most important election ever. But then again, 2012 was supposed to be the most important election ever, and before that, 2008. Every election is important, and yet, in this era of 24/7 cable news channels and internet websites and tweets, it seems as though there has been more political news coverage already this election cycle than any previous election — and neither party has yet selected its presidential candidate! My purpose in writing this column, though, is not to persuade you on the virtues of one political party over the other, or on one political position over another; no, my purpose here is to persuade you of something with which I hope you will readily agree: that politics has no place in either our Bar Association, or any other state bar association, or, for that matter, the American Bar Association.

Now, I think this should be an easy sell, and for many (hopefully most) of you, it probably is. So, you may be asking yourself, why I am writing this column? Because, for better or worse, politics at the Bar is something we need to continually be on guard against.

Our Bar Association is made up of many individuals. Some are Republicans. Some are Democrats. Some are against the death penalty, others are for it. Some want to legalize marijuana, others do not. Some want the school year to start after Labor Day, others do not (okay, this last one may not be a hot button for many, but there is currently

a bill pending in Dover that would require schools to start the school year after Labor Day). For better or worse, there are no right or wrong answers to most of these questions. Where one comes down on these particular issues (and others) will depend not on the law, but on one's notions of morality, and religion, and public policy judgments. And so, these questions are left to the political process, as they should be.

As Bar president, I get to meet with folks from other bar associations, and we compare notes and discuss issues regarding running associations, best practices, etc. At one of these meetings, another nearby state association described its plan to start a Political Action Committee, which would donate to members of the state legislature. It was felt that by creating a PAC, the Bar Association might command more attention in the state capital. The rest of us all listened politely, but finally I had to voice my objection. "How," I asked, "can a bar association make contributions to candidates of one party, without making similar contributions to candidates of the other party? What

are you going to say to lawyers who are of one party who object to donations to candidates not of their party? All I see is the possibility for a lot of dissension being created for little or no gain, if any." No one else in the room chimed in to agree with me (there were officers from several states present), but then again, the Association contemplating the creation of its own PAC did not have any ready answers for my questions, other than to say they would obviously try and limit their contributions to "important" legislators in "key" positions. This particular story, though, has what I think is a happy ending — several months later, I ran into those same officers from the state contemplating creating a PAC and they thanked me for my comments, explaining that those comments got them thinking on the issues I raised and they realized that political contributions by the PAC of a non-partisan bar association simply was not appropriate and would lead to dissension.

Now, the foregoing story of a PAC may seem like an easy and obvious decision. Of course, the bar association should not be creating its own PAC. Of

“The only “politics” in which the DSBA should be engaged are those in which it historically has been engaged without division or question — that is, in those discrete areas of statutory law where the need for updates and modernization is necessary and, in some cases, constant.”

course the bar association should not be making contributions to elected officials or candidates for office. Of course, that would be divisive in an association with many viewpoints and members of all political persuasions. But, a PAC is just an extreme example.

There is a bill pending in the General Assembly to repeal Delaware's death penalty. My views on the bill are my own (they might surprise you, they might not), and your views are your own. But the DSBA should simply not take a position on the bill. There are lawyers on both sides of the issue. Good lawyers. And, we do ourselves no favor when we wade into such areas. Fortunately, no one has asked us to or suggested that we should. We should not. Individual lawyers will, of course, weigh in one way or another or perhaps not at all, but as an Association representing and respecting all members, the DSBA should not weigh in on this or other similar political issues. Indeed, in a perfect world, the DSBA would be perceived as entirely apolitical with no political view at all.

The only "politics" in which the DSBA should be engaged are those in which it historically has been engaged without division or question — that is, in those discrete areas of statutory law where the need for updates and modernization is necessary and, in some cases, constant. Corporate law is, no doubt, the example that springs to folks' minds; but there are many others. The Real Property Section has recently crafted legislation to undo a quirk in Delaware law that requires some mortgage foreclosures be filed in the Court of Chancery, rather than Superior Court where there is a mandatory mediation process for residential foreclosures. Your eyes may be glazing over, but that is my point — the court in which mortgage foreclosures are filed is not a partisan issue. It is not a front in the culture wars. It is a technical fix and improvement with overwhelming support from those who practice in the area.

2016 may or may not turn out to be the most important election of our lifetime. History will be the judge of that.

But, our Bar Association will include lawyers who voted for the winning candidates and lawyers who voted for the losing candidates. Only by respecting all such views can our Association do right by all its members. ☪

Richard "Shark" Forsten grew up in Delaware and is the current President of the State Bar Association, although the views expressed in his President's columns are entirely his own. Shark has been writing monthly book reviews for the Bar Journal since 1998, and elsewhere in these pages you can find his latest review. He is a partner with the firm of Saul Ewing, LLP, where he practices in the areas of commercial real estate, land use, business transactions and related litigation, and can be reached at rforsten@saul.com.

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EDITOR'S PERSPECTIVE

By David W. deBruin, Esquire

Together Everyone Achieves More

Depending upon your practice area, there is no doubt that highly-skilled and efficient support staff of administrative professionals is essential for a successful legal practice. I am fortunate because I happen to have fantastic support staff upon whom I rely heavily in my practice on a daily basis.

As with any relationship, it usually takes a good bit of time to develop a level of trust with others to allow them the freedom to respond to adversaries and deadlines. There is a natural learning curve when you indoctrinate new members of your support staff. By monitoring their work product, you can develop a good sense of what skill sets people actually bring to the table. It is important to note that what people actually do well and what people think they do well is not always one and the same.

During the years that I have been practicing, I have fluctuated between having a large and diverse support staff who assisted in innumerable ways, as well as significant portions of time during which I have only had one member of my in-house support staff. I suppose that part of this evolution was related to where I was working and what I was working on, however another part of that was certainly due to the people with whom I was working.

There are a number of different views on how best to

train and motivate the people that you work with as a practicing attorney. As a practical matter, for newly admitted attorneys, there are many people who have worked as support staff for many years, who would rightfully enjoy the opportunity to train you. That being said, in this article I will only touch on a couple of styles that I have observed for illustrative purposes.

One senior attorney that I worked with years ago literally told me that I should treat my support staff like dogs. Not the way most people treat their pets (as a beloved member of the family), rather, more like the way the infamous quarterback, Michael Vick, treated the dogs in his dog-fighting business (for which he served time in a federal prison). That attorney truly believed that if you were nice to your support staff they would ultimately take complete advantage of your kindness. Sadly, that attorney definitely practiced what he preached.

I could not tolerate his deplorable behavior and I let him know this on many occasions. Furthermore, when I did come to the defense of members of his support staff (some of whom I shared) I was blamed for softening them up and allowing them far too much leeway. Somehow, my treating them with respect and asking them to work together to produce the best possible work product was allegedly creating a collective laziness. I am pretty sure that it had nothing to do with the fact that based upon how we each treated the support staff, my work seemed to take priority and get done with greater care and attention. Does sarcasm transfer in print? In any case, that is not a management style that I embrace in any way, nor is it one that I suggest any attorney utilize with support staff.

A very different style regarding the training and motivation of the people with whom you work as a practicing attorney is creating a team mentality. If you cannot tell already, this is a concept to which I am particularly wed. No doubt that you have all heard about and/or are personally aware of this model as it relates to corporate America. However, this really can translate in the legal profession. Granted, the make up of your team of support staff can vary greatly by practice area and in cases where there is a team of one, some of this philosophy does not necessarily translate.



Keeping in mind what I wrote earlier (what people actually do well and what people think they do well is not always one in the same); I think that an attorney can maximize the quality and quantity of work product by dividing tasks amongst each team member. I am also a believer in soliciting input from my support staff on how to improve our processes and/or work product. A few other key elements are ensuring that each support staff team member is flexible enough to assist the group on virtually any project and rewarding the team when appropriate for excellent work. Once you have this type of structure in place, it will soon become readily apparent if you have people who are not willing to truly buy into the system and/or are just going through the motions.

I am not trying to advocate any particular style. I simply know what works best for my practice. However, I am trying to advocate for attorneys to recognize that your support staff is an integral part of any success that you may achieve and they need to be recognized as such. I believe that people that feel appreciated routinely do more than just what is asked of them. On that note, Administrative Professionals Day is on Wednesday, April 27. Depending on when you read this article, hopefully, there is still time for you to celebrate this day of well-deserved recognition.

This Editor's Perspective column was adapted and reprinted from the May 2008 publication of The Journal of The Delaware State Bar Association. 

Bar Journal Editor **David deBruin** is the founder of The deBruin Firm and his practice is dedicated to representing victims of mesothelioma, dangerous drug and medical devices, and select complex litigation. He can be reached at ddebruin@thedebruinfirm.com.

The St. Thomas More Society
of the
Diocese of Wilmington

Will Celebrate Its Annual Award Dinner
Honoring
James G. McGiffin, Jr., Esq.

on
Sunday, May 15, 2016
Cocktails at 5:00 P.M. (cash bar)
Dinner at 6:00 P.M.

Location
The Wilmington Country Club
4825 Kennett Pike
Wilmington, Delaware

Please e-mail francis.mieczkowski@state.de.us for registration information and sponsorship opportunities

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This committee provides peer counseling and support to lawyers overburdened by personal or practice-related problems. It offers help to lawyers who, during difficult times, may need assistance in meeting law practice demands. The members of this committee, individually or as a team, will help with the time and energy needed to keep a law practice operating smoothly and to protect clients. Call a member if you or someone you know needs assistance.

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CALENDAR OF EVENTS

Remember that CLE Videos are shown for CLE credit five days a week at the DSBA in Wilmington! Call (302) 658-5279 to make an appointment.

April 2016

Tuesday, April 19, 2016

Short Topics in Real Estate 2016

3.8 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Tuesday, April 26, 2016

Environmental Law 2016

3.5 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Thursday, April 28, 2016

When the Court Calls

3.5 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

May 2016

Monday, May 2, 2016

2016 Judge Haile L. Alford Memorial Breakfast

DuPont Country Club, 1001 Rockland Road, Wilmington, DE

Wednesday, May 4, 2016

Workers' Compensation

6.5 hours CLE credit

Chase Center on the Riverfront, Wilmington, DE

Thursday, May 12, 2016

Fundamentals of Civil Litigation

6.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Kent County Courthouse, Dover, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Monday, May 16, 2016

Recent Legislative Changes in Commercial Law

3.0 hours CLE credit

Delaware State Bar Association, Wilmington, DE

Webcast to Tunnell & Raysor, Georgetown, DE

Tuesday, May 17, 2016

Law Day Luncheon

Hotel du Pont, Wilmington, DE

June 2016

Friday, June 17, 2016

2016 Bench and Bar Conference

Chase Center on the Riverfront, Wilmington, DE

SECTION & COMMITTEE MEETINGS

April 2016

Tuesday, April 12, 2016 • 11:00 a.m.

LGBT Section Meeting

TBD

Tuesday, April 12, 2016 • 12:15 p.m.

Small Firms & Solo Practitioners Section Meeting

The Law Offices of Denise D. Nordheimer, Esquire, LLC, 2001 Baynard Boulevard, Wilmington, DE

Wednesday, April 13, 2016 • 4:00 p.m.

ADR Section Meeting

Berger Harris, LLP, 1105 North Market Street, 11th Floor, Wilmington, DE

Thursday, April 14, 2016 • 6:00 p.m.

Young Lawyers Section Happy Hour

TBD

Tuesday, April 19, 2016 • 12:30 p.m.

Labor & Employment Law Section Meeting

Young Conaway Stargatt & Taylor LLP, 1000 North King Street, Wilmington, DE

Thursday, April 18, 2016 • 12:00 p.m.

Executive Committee Meeting

Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Thursday, April 18, 2016 • 4:00 p.m.

Elder Law Section Meeting

Kleiner & Kleiner LLC, 501 Silverside Road, Suite 46, Wilmington, DE

Friday, April 22, 2016 • 12:00 p.m.

Workers' Compensation Section Meeting

Young Conaway Stargatt & Taylor LLP, 1000 North King Street, Wilmington, DE

Monday, April 25, 2016 • 4:00 p.m.

Taxation Section Meeting

DuPont Headquarters, 974 Centre Road, Chestnut Run Plaza, Building 735, Room 1135, Wilmington, DE

Thursday, April 28, 2016 • 4:00 p.m.

Family Law Section Meeting

Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE

May 2016

Monday, May 2, 2016 • 12:30 p.m.

Senior Lawyers Committee Monthly Luncheon Meeting

Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Tuesday, May 3, 2016 • 12:00 p.m.

E-Discovery & Technology Section Meeting

Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Tuesday, May 3, 2016 • 3:30 p.m.

Estates & Trusts Section Meeting

Duane Morris LLP, 222 Delaware Avenue, Suite 1600, Wilmington, DE

Wednesday, May 4, 2016 • 12:30 p.m.

Women and the Law Section Meeting

Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Thursday, May 5, 2016 • 12:00 p.m.

Litigation Section Meeting

Delaware State Bar Association, 405 North King Street, Suite 100, Wilmington, DE

Thursday, May 5, 2016 • 12:15 p.m.

Real & Personal Property Section Meeting

Tim Rafferty's Office, Artisans Bank, Centerville Road, Wilmington, DE

Tuesday, May 10, 2016 • 11:00 a.m.

LGBT Section Meeting

TBD

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TIPS ON TECHNOLOGY

By Kevin F. Brady, Esquire

The Privacy/Security Dilemma

Convenience versus Protection

The issue of personal privacy and security continues to make headlines in the news. From “Apple v. FBI” to Erin Andrews to Hulk Hogan, expectations about privacy and security have run the full gamut. When it comes to technology, we are in a constant battle balancing comfort and convenience against privacy and security protection. We want the convenience of the technology, but we do not want to leave a digital trail almost everywhere we go. In addition to credit cards transmitting personal information to RFID readers, there are conveniences like Amazon Echo where you ask “Alexa” to perform a series of tasks, but yet, you do not think twice about your personal preference data being stored on an Amazon server. While iPhones have become a part of our culture, Apple has been collecting data about its users without the users even knowing about it. For example, if anyone wants to know where your iPhone (or you) has been for the past 30 days (such as a parent, spouse, significant other, or opposing counsel) all they need to do is look at your phone; the details are memorialized on the phone. (NOTE: If you want to disable this function go to Settings > Privacy > Location Services [scroll to bottom] > System Services > Frequent Locations [tap and toggle to the off position]).

Personal Data at Risk

Another way your personal data can be at risk without you thinking about it is when you rent a car. If you enable Bluetooth to connect your mobile device to the car’s hands-free system,

“When it comes to technology, we are in a constant battle balancing comfort and convenience against privacy and security protection. We want the convenience of the technology, but we do not want to leave a digital trail almost everywhere we go.”

the technology in the car will store your personal data such as your phone number, a log of your calls, your contacts that you dialed, and so on. That data will be saved on the car’s system and unless you delete this information before returning the car, the information will be available for the next renter (or hacker).

New cars are now designed with sophisticated technology designed to collect lots of data about the performance of the car (and the driver). Some new cars have performance data-recorders that allow the owner to record, share, and analyze his or her driving experiences. Some vehicles even allow the owner to insert an SD card into a reader that will allow the owner to collect an array of performance metrics, including speed and engine performance. For the owner who is concerned about what is happening to the car when the valet, your spouse, or your child is driving the car, there is technology available that records front-facing video and captures audio from within the car without the owner being in the car (which may have legal ramifications in some states, notably Delaware). And, while we have all heard about self-driving cars being remotely controlled, the FBI and the National Highway Traffic Safety Administration recently issued a warning about the increasing vulnerabilities of cars to cyber hackers. The report referred to a July 2105 incident where a car was remotely hacked — taking over control of the steering, braking, and transmission — through the car’s information/entertainment system.

Man v. Machine — Who is Winning?

It is estimated that by 2020, the network of physical objects embedded with technology that enables these objects to communicate with each other (the so called “Internet of Things”) will grow from 5 billion to 25 billion. These devices will generate a staggering amount of data. Many of those devices will function at speeds that will outpace human intervention thus requiring machines with artificial intelligence to operate them. Do we run the risk that the computers we create will become smarter than we are? Recently Google’s AlphaGo artificial intelligence (AI) beat the top player in the world at a game of Go (a 2,500 year-old Eastern game of strategy and intuition that is exponentially

more complicated than chess.) Google's DeepMind researchers trained the system to play Go on its own and then matched their system against itself to enable it to increase its skill set and ultimately beat its creator, i.e., a human. While the possibilities seem endless, the legal challenges could also be significant.

As 3D Printers Mature, 4D Printers Arrive

3D printers continue to be a very hot topic and architects are grabbing center stage by "printing" houses using a combination of construction waste and quick-drying cement. However, an engineering firm in China has set the bar by "printing" a six-story apartment building using a printer that measures 20 feet tall, 33 feet wide, and 132 feet long.

Researchers are also making tremendous strides with 3D printers in the healthcare field, developing inks made of living cells and creating printing tools to assemble living tissue. Doctors soon will be able to use a 3D printer to print personalized body parts like blood vessels, bones, and cartilage to repair organs like your heart, knee, or ear. While 3D printers are becoming more sophisticated, 4D printers have emerged as the wave of the future for science, technology, and medicine. With 4D printers, users can print a strand of material that can be transformed from one 3D shape to another 3D shape. For example, you can take a strand of material, place it in water, and it will fold into a shape based on the alignment of the material; a cube can be transformed into a rectangle or any other shape that you want. A wall that contains electrical and plumbing fixtures could be printed and then the building could build itself much like a Transformer. Sound far-fetched? You are only limited by your imagination! ☺

Kevin F. Brady is Of Counsel at Redgrave LLP in Washington D.C. and can be reached at kbrady@redgravellp.com.

"Tips on Technology" is service of the E-Discovery and Technology Law Section of the Delaware State Bar Association.



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Let's Be "Reasonable" About Data Security

By Edward J. McAndrew, Esquire

The number and severity of cyber incidents impacting lawyers and their organizations continues to escalate. From unintentional data loss, to malicious insider theft, to external spies and data thieves, to saboteurs and extortionists engaged in ransomware attacks, cyber risk is everywhere, every day. These incidents have implications for lawyers, their organizations, and clients who are managing their own cyber risk.

Let's start with clients. Cybersecurity is a top priority for many in-house counsel. The Association of Corporate Counsel Foundation's recently released "State of Cybersecurity Report" provides insight on the concerns of more than 1,000 senior lawyers at 887 organizations worldwide. Findings include:

- Nearly one-third of in-house counsel have experienced a data breach, with almost half of those occurring within the past two years;
- Reputational harm, followed by loss of proprietary information and economic loss, are the top concerns of in-house counsel;
- Only seven percent of in-house attorneys have the highest degree of confidence that their third-party affiliates (including legal service providers) are adequately protecting them from cybersecurity risks;
- Half of in-house attorneys want to increase their role and responsibility in cybersecurity, and 57 percent expect that their legal department's role in cybersecurity matters will increase in the coming year;
- Although employee error factored into the majority of incidents, fewer than half of the responding organizations have implemented mandatory cybersecurity training for employees;
- Only 57 percent of companies have policies and procedures in place to govern identity and access management — a major vector of cyberattack;
- Only 18 percent of companies have prepared an internal data map;
- Fifty-seven percent of companies reported that information that was compromised during the breach was not encrypted; and
- Of those companies that have experienced a data breach, only 19 percent had cybersecurity insurance policies that fully covered the related damages.

(ACC Foundation, *The State of Cybersecurity Report* (Dec. 2015), available at: <http://www.acc.com/legalresources/resource.cfm?show=1416923>.)

Protecting client data is an ethical obligation and is becoming a critical business requirement for lawyers. State bars, including our own, have adopted ethical rules imposing a duty to employ "reasonable efforts" to protect client data. Delaware Lawyers' Rules of Professional Conduct Rule 1.6(c) & cmts 19-20.

Driven by pressure imposed on them by regulators, customers, and others, organizational clients are auditing their legal service providers about data security and requiring strict provisions relating to such in retainer agreements. Through 'best practices' guidance and settlement agreements, regulators and private civil litigants have begun to define the minimum requirements of "reasonable data security" standards — albeit outside of the legal services context so far.

A Delaware lawyer's search for the definition of "reasonableness" should begin with the Commission on Law and Technology's "Leading Practices: Data Security," which is available on the Commission's website at: <http://courts.delaware.gov/declt/datasecurity.stm>. These Leading Practices were developed from many of the same resources relied upon by regulators, private organizations and courts to define "reasonable" cybersecurity steps relating to risk assessment, data security planning and incident response practices. Employing these Leading Practices will assist lawyers and their organizations in creating a 'record of reasonableness' that can be used to satisfy clients and regulators alike, and to defend against scrutiny in the wake of a cyber incident.

What constitutes "reasonable" data security remains a largely unsettled, and highly fact-specific question. Different approaches, however, are beginning to emerge.

An example of relatively stringent data security obligations comes from the

California Data Breach Report, issued in February 2016 by the California Attorney General's Office. This Report establishes a data security "standard of care" for reasonable data security relating to personally identifiable information under California law. The Report expressly identifies the Center for Internet Security's Critical Security Controls, formerly known as the SANS Top 20, as "the minimum level of information security that all organizations that collect or maintain personal information should meet." These Controls are available at <https://www.cisecurity.org/critical-controls/download.cfm>. The California Attorney General will now view the "failure to implement all such Controls that apply to an organization's environment as constitut[ing] a lack of reasonable security."

A less onerous approach to reasonable data security can be gleaned from the Federal Trade Commission's "Start with Security" Report, which is available at: <https://www.ftc.gov/system/files/documents/plain-language/pdf0205-startwithsecurity.pdf>. This Report cata-

logs lessons learned from the FTC's data security cases, all of which are based on the concept of "reasonableness" in data security efforts. This is perhaps the most developed body of "persuasive authority" on the meaning of "reasonableness," and it runs throughout virtually all regulatory guidance and existing precedent on point.

In between any extremes, the Commission's Leading Practices — which appear to remain the only resource of their type published by a State Supreme Court — allow practitioners of all types and sizes to develop a cybersecurity posture appropriate to their circumstances. Delaware lawyers should avail themselves of this unique resource to develop their "records of reasonableness" in cybersecurity planning. 

Ed McAndrew is a Privacy & Data Security partner at Ballard Spahr LLP and the leader of the Commission on Law and Technology's Data Security Working Group.

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By Charles Slanina, Esquire

Litigation Lending in Delaware

“**E**thically Speaking” has twice dealt with the issues arising from litigation lending, starting with “Lawyer v. Banker: What are the Permissible Limits of an Attorney’s Role in Litigation Financing?” (November 2004) followed by an update in October 2005. At that time, I closed with the question as to what Delaware might ultimately decide is the permissible role of counsel in assisting clients in obtaining litigation financing and cooperating with lenders in the course of the litigation. In a jurisdiction in which litigation financing is viewed as improper, such participation by counsel may be treated as malpractice, misconduct, or both.

We may now have part of the answer. A small company, Charge Injection Technologies, Inc. (“CIT”) filed a trade secrets lawsuit against DuPont in 2007 alleging that DuPont wrongfully used and disclosed CIT’s proprietary and confidential technology. Several years into the litigation, CIT sought third-party financing to help cover the cost of the litigation as well as other business expenses. According to a March 10, 2016, article by Samson Habte in the Lawyers’ Manual of Professional Conduct, CIT concluded that “it lacked adequate resources to pursue long-drawn-out litigation against DuPont, which has tens of billions of dollars at its disposal to wage a war of attrition against litigation adversaries.” As a result, CIT entered into a “Forward Purchase Agreement” (“FPA”) with a litigation lender to provide financing in exchange for a share in future

“*In a jurisdiction in which litigation financing is viewed as improper, such participation by counsel may be treated as malpractice, misconduct, or both.*”

proceeds from the lawsuit and a security interest in CIT’s claim.

In a March 9, 2016, opinion, President Judge Jurden issued an opinion in *Charge Injection Technologies, Inc. v. E.I. Nemours DuPont & Co.* denying DuPont’s motion to dismiss the complaint based on a claim that the plaintiff had engaged in champerty and maintenance. As the opinion (and the previous “Ethically Speaking” columns) points out, the common law doctrines of Champerty and Maintenance originated in medieval England in response to the practice of feudal lords and merchants financing legal claims in exchange for a share of the results. These “champertors” paid “maintainers” who would prosecute lawsuits on the champertor’s behalf. In response, laws against Champerty and Maintenance were enacted to prevent disinterested third-parties from stirring up or encouraging fraudulent and frivolous lawsuits. Although it can be argued that Delaware has not historically recognized these doctrines, the courts previously held that, “[a]bsent a ruling from the Delaware Supreme Court holding that [the] doctrines are dead, this Court will continue to recognize them.” *Charge Injection Techs, Inc. v. E.I. DuPont de Nemours & Co.*, 2014 WL 891286, at *3

(Del. Super. Feb. 27, 2014) appeal refused mem., 89 A.3d 476 (Del. 2014).

In response to the recent motion to dismiss, CIT argued that its relationship with the lender was not champertous because CIT did not assign its claim and permit the lender to carry on the litigation in CIT’s absence. As the opinion notes, under Delaware law, Champerty is “an agreement between the owner of the claim and a volunteer that the latter may take the claim and collect it, dividing the proceeds with the owner, if they prevail; the Champertor to carry on the suit at his own expense,” citing *In re Emerging Comm(NS), Inc. Shareholders’ Litg.*, 2004 WL 1305745, at *29 (Del. Ch. 2004) and *Hall v. State*, 655 A.2d 827, 829 (Del. Super. 1994).

The Court was not persuaded by DuPont’s argument that the arrangement was champertous based on the allegation that the lender had “*de facto* control” of the litigation. Judge Jurden found that CIT remained the *bona fide* owner of the claim and that the lender had no right to maintain the action independent of CIT because in part, there was no assignment, merely a security agreement against the recovery.

The Court also rejected DuPont’s claim that the doctrine of Champerty

should be the basis for the dismissal of the suit because the lending encouraged litigation. Champerty bars “Officious Meddling,” for the purpose of stirring up litigation and encouraging others to bring actions. The Court found that the lender in this instance was not an officious inter-meddler because CIT sought out the lender and not the other way around. The agreement between CIT and the lender did not occur until four years after suit was initiated and the lender did not direct or control the litigation.

The Court appears to conclude that, in this instance, litigation financing as an investment in litigation is permissible, whereas the lender’s involvement in litigation through assignment may be more problematic. Based on the opinion, if the original party assigns the cause of action to the lender or investor and walks away, the Doctrines of Champerty and Maintenance may be more applicable to bar the claim. Although fact-driven, this decision is one of first impression in Delaware. With litigation lending on the rise nationwide, its also an issue ripe for appellate review. Stay tuned for Part IV.

“Ethically Speaking” is intended to stimulate awareness of ethical issues. It is not intended as legal advice nor does it necessarily represent the opinion of the Delaware State Bar Association.

“Ethically Speaking” is available online. The columns from the past three years are available on www.dsba.org.

Charles Slanina is a partner in the firm of Finger & Slanina, LLC. His practice areas include disciplinary defense and consultations on professional responsibility issues. Additional information about the author is available at www.delawgroup.com.

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Stealing Rina's Approach

Presented by Aaron W. Mitchell, REBC

This month, I decided to write an article that was inspired by my friendship and working relationship with Rina Marks. I have known Rina since the Delaware State Bar Insurance Services was formed in January 2005. She has been a great advocate for the protection of attorneys and firms, but I have never known her to walk on eggshells when discussing health insurance. She was certain to point out that the investment that she was making in insurance premiums was an investment that was unlikely to yield a return. One of the first things I learned from Rina was how difficult it was to sell medical insurance to a healthy person.

In working on the insurance at the Delaware State Bar Association, I learned many things from meetings with Rina and Sorelis. Over more than a decade working together, I noticed that Rina and her team looked at insurance purchases in three ways:

1. Whether we like it or not, many types of insurance are not optional.
2. Insurance is a business and not a social assistance.
3. There is a best plan or solution for each employee.

Rina was the first person to tell me that Blue Cross was collecting a fortune from her because she never was sick. I am sure that she was correct, but neither she nor I will ever expect a Thank You letter from the insurance company for years of premiums without claims. Nonetheless, she refused to give up on protecting her family and her employees. She recognized that until we can afford to pay out of pocket for a month in the hospital or have enough wealth to cover 10 years of salary replacement, many types of insurance are necessary, whether we like them or not.

Planning ahead and protecting the risks we do not see today are the keys to every successful insurance program. Rina would laugh when I would tell her about an attorney who needed a crown or a root canal and now was ready to purchase dental insurance. She recognized that by planning ahead, insurance will be there if you ever need it, but if you wait until it is too late, the only thing available may be a valuable life lesson.

Rina went on the philosophy that each year there was a “right answer” or a solution to the best way to buy insurance. She may not have loved insurance, but she always listened intently to new programs and updates in the marketplace. I will never forget the nervous anticipation I had waiting for her reply after first explaining a Health Savings Account program 10 years ago. Not surprisingly, her reaction was positive, because it was a program based in logic: take on a higher deductible, stay healthy and avoid meeting the deductible, reap the rewards of lower premiums.

Although these may not be her exact words, my reflection on our work with Rina and the DSBA, yields the following messages:

1. Identify the risks that can be protected against.
2. Plan early and protect yourself before it is too late or too expensive.
3. Know that each year requires a new investment of time to make sure you have the right program.

Rina, we appreciate your partnership, your investment of time, and your feedback for more than 10 years. If there is anyone left in the Bar Association who has not heard your wisdom, I hope this reaches them.

Aaron Mitchell is DSBIS's lead marketing representative, coordinating all lines of insurance. His team can be contacted with questions on this article or any insurance topic. Contact Aaron at (302) 397-0170 or aaron.mitchell@usi.biz.

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By Susan Simmons

Providing *Pro Bono* Assistance to Charitable Organizations

Good for you! You are giving back by coaching or advising a charity in your spare time. When the new U.S. Census figures were published in mid-September 2015, they showed what many of us already knew too well. The headline was that the nation's official poverty rate in 2014 was 14.8 percent, meaning there were 46.7 million people in poverty in the United States, which continues to be the highest ever recorded since the Census Bureau has been tracking the statistics.

“Nonprofit communities are at the forefront of addressing today’s most pressing challenges. By providing health care, housing, food, and education services, they are ensuring that individuals have their basic needs met.”

Nonprofit communities are at the forefront of addressing today’s most pressing challenges. By providing health care, housing, food, and education services they are ensuring that individuals have their basic needs met. As a society, we are increasingly reliant on this structure to care for our communities, address environmental issues, and provide needed cultural elements such as theater and art spaces. While there is an increasing reliance on and need for this structure, the sustainability of nonprofit organizations is often neglected. Lawyers have a strong tradition of providing legal services to nonprofit organizations, often on a *pro bono* basis. *Pro bono* provides a unique opportunity to help nonprofit organizations better serve the causes they address and ensure sustainability into the future.

There is a growing trend in corporate America for *pro bono* service. In 2012, the Points of Light Foundation found that 5,000 companies do *pro bono* and skills-based service, mobilizing \$5B worth of *pro bono* action toward critical needs. (Source: <http://www.abillionpluschange.org>). A 2015 survey of executives by the Center for Corporate Citizenship at Boston College, *Community Involvement Study 2015*, explores how companies are investing in communities and how these efforts connect to their businesses: “The majority of companies today report that community involvement contributes to key business goals, including improved reputation and the attraction and retention of employees.” While this is not an indication of the scale of employee volunteerism across the country or in the legal sector, it is a demonstration of the value that corporations place on volunteering as a key component of corporate philanthropy.

Pro bono service takes employee volunteering to the next level by marrying a company’s core competencies with its corporate social responsibility strategy. *Pro bono* service fits nicely with a new trend in the private sector where corporate volunteering, as a component of corporate philanthropy, is becoming more personal. Businesses are creating a stronger alliance between their mission and the causes to which they donate time, funds, and services. Corporations have the potential to strategically focus their social investment by leveraging their most competitive asset — their talent. The specific knowledge, unique business experience and particular skills of professional services employees, are often what nonprofits lack most.

Given the current economic climate, nonprofits may need legal assistance now more than ever. Still, given the breadth of relevant practice area knowledge and necessary skills, it can be challenging to both “do good” for a nonprofit and ensure a job well done.

In Volume 18, Number 6 July/August 2009 of the ABA’s *Business Law Today*, focusing on non-profit organizations and the laudable practice of doing well by doing good, we are warned: “The most common mistake is underestimating the scope and complexity of the laws governing charities. This area has a multilayered playbook.”

Businesses have owners and customers. Laws and the results of elections structure governments. Nonprofits, for the most part, stand alone, responsible only to themselves. This independence puts a special burden

on the board (and everyone else) to understand the concept of “stewardship” and think carefully about ethics. One part of this that boards struggle with is how to avoid damage from conflicts of interest that may come up in the boardroom or in other parts of the organization. These organizations operate with many constraints under federal tax law and relevant State statutes given their dedication to public benefit purposes. Always be aware of your status re: malpractice insurance and how you are protected when working with a nonprofit.

So, what is a diligent *pro bono* lawyer to do? The following are some suggestions by Alice M. Anderson and Sheila Warren, sole practitioners exclusively practicing the law of nonprofit organizations in San Francisco, published in the ABA’s *Business Law Today*, July/August 2009:

- Scan a comprehensive treatise to get an overview of the universe of tax-exempt organizations law;
- Browse the charities sections of the IRS and applicable state attorneys general’s websites;
- Tell your clients that they will need paid expert counsel at times;
- Set up a relationship with a competent and state-appropriate lawyer whose practice centers on exempt organizations law;
- Issue-spot with this lawyer regularly. Bear in mind that getting tax-exempt status is one thing; complying with the rules afterward is another altogether, and is especially complex for private foundations;
- Make sure that your client’s accountant is familiar with nonprofit-specific accounting requirements, as erroneous information returns to the IRS can result in audits;
- Get your client’s board and officers properly trained, with both an overview and the specifics of exempt organizations law that apply to its activities; and finally
- Sign the nonprofit’s team (and yourself) up for regular updates from well-respected advisory organizations.



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If you or your firm are interested in or already participates in *Pro Bono*, let us know:

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This column was adapted and reprinted from the April 2012 publication of The Journal of The Delaware State Bar Association. 

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DE-LAP ZONE

A Message from the Delaware Lawyers Assistance Program

By Carol P. Waldhauser, Executive Director

Untreated Depression Can Sabotage Your Life and Career

“Without treatment, I did not give a damn about myself, anybody, or anything. I was hungry; but couldn't eat. I needed to work, but could not get out of bed. I just felt terrible sadness and dreadful hopelessness. I sought treatment for my high blood pressure and diabetes; but didn't for my clinical depression. It was the clinical depression that nearly took my life. Today, I realize that all diseases of the body and the mind need to be treated.”

The Illness

Most individuals feel sad at times. It may be caused by a setback or a loss, while anxiety may be triggered by a threat or a challenge. Although, it is perfectly normal for our emotions to wane with the ups and downs of our lives, it seems that the word depression is part of our everyday language. However, as defined in *Abnormal Psychology*, “Often we use the term depression loosely, referring to temporary sadness caused by almost any kind of personal setback or life-event. Conversely, depression is a medical illness that affects a person's body, mood and thoughts — the whole person. It affects eating and sleeping habits, feelings about self, and everyday thoughts. These mood changes may be temporary (short-term) or long lasting (long-term). They may range from a relatively minor feeling of melancholy to a deeply negative view of the world and an inability to function effectively.”

Depression is the most common mental illness and no one is completely immune. The illness occurs in all age, racial and socioeconomic groups. According to statistics published in *www.PRPonline.net*: “At some point in their lives, an estimated one in four women and 1 in 10 men can expect to develop depression so severe as to require treatment. Evidence supports, however, that men are less willing to acknowledge a problem. Studies suggest that some men may mask their symptoms with alcohol or drug use.”

Risk Factors

Risk factors are what make an individual vulnerable to developing a particular disorder. These factors are related to that person's biological vulnerabilities, other risk factors in the environment, and the presence or absence of facts that promote resiliency.

According to The Johns Hopkins White Papers, *Depression and Anxiety*, by Dr. Karen L. Swartz, M.D., 2009, “Depression is often a family affair. Scientists, for example, have identified a gene that may be linked to bipolar disorder. In addition, they have found a common genetic mutation associated with a person developing clinical depression when faced with traumatic events in his or her life.”

Furthermore, research indicates that:

- Depression is one the leading causes of disability in US — affecting 10 percent of the general public and in lawyers it is much higher — 20-23 percent.
- Depression, fatigue, burnout, and substance abuse can, and does, adversely affect the lawyer's quality of service to clients and hampers quality of life.
- Fifteen percent of people who have a serious depression may eventually commit suicide.

Accordingly, many individuals, especially those within the legal community suffer from the effects of mental/emotional health issues. The afflicted include not only the public, but practicing lawyers, judges, and law students, as well.

How Depression Affects Your Body

The Johns Hopkins White Papers suggest that “most people think of depression and anxiety as conditions of the mind, influencing one's mood and outlook on life. But, that is only part of the story. For many people, the more common manifestations of depression are physical, not mental, and they can have long-term consequences.” How depression affects your body may include, but is not limited to:

- Headache
- Diarrhea/constipation

- Nausea/vomiting
- Heart disease
- Osteoporosis
- High-blood pressure

Accordingly, overconsumption of alcohol and certain illegal drugs can contribute to depression and make it worse, as can withdrawal from alcohol, cocaine, or amphetamines. Drugs can cause other mental changes as well. For example, amphetamines, cocaine, and phencyclidine (PCP) can all induce mania in people with bipolar disorder. (Johns Hopkins Medicine, *Depression and Anxiety*, 2009.)



Symptoms of Depression

- Depressed mood most of the day
- Significant weight loss or gain
- Indecisiveness and diminished ability to think or concentrate (the smallest task may seem difficult or impossible to accomplish)
- Fatigue or loss of energy
- Sleep disturbances (either insomnia or sleeping longer than usual)
- Memory difficulty and easy distraction

- Feelings of worthlessness or excessive or inappropriate guilt
- The inability to sit still, pacing, or hand-wringing
- Slowed speech, increased pauses before answering a question, monotonous speech tone, slowed body movements
- An overall decrease in energy level
- Recurrent thoughts of death or suicide

Symptoms Unique to Lawyers

- Inability to meet professional or personal obligations: procrastination, file stagnation and neglect, lowered productivity, missing deadlines (statutes, filing responsive pleadings or motions), excuse making, and misrepresentation to clients
 - Emotional paralysis — unable to open mail or answer phones
 - Persistent sadness or apathy, crying, anxiety, “empty” feelings
 - Loss of interest and/or pleasure
 - Trouble concentrating or remembering issues or things
 - Guilt, feelings of hopelessness, helplessness, worthlessness, low self-esteem
 - Changes in sexual energy or desire
 - Feelings of bafflement, confusion, loneliness, isolation, desolation, being overwhelmed, and/or detached from what is going on around you

Treatment

Fortunately, technology and other new advances in treatment for depression make it one of the most treatable of all mental illnesses. Talk therapy, medication monitoring, or both can relieve symptoms of depression. Unfortunately, the biggest issue is not what treatment; but rather getting people into treatment. People hesitate to seek

treatment for depression because they mistakenly think:

- Depression is a weakness, not an illness.
- Depression is a normal part of aging; and/or
- Depression is best dealt with by non-health professionals.

Accordingly, more than 80 percent of people with a depressive illness improve with appropriate treatment. Treatment can lessen the severity of depression, and it may also reduce the duration of the episode and may help prevent additional bouts of depression. With early recognition, intervention and support, most people can overcome depression and get on with their lives.

As members of the legal profession, most attorneys spend their time dealing with other people’s problems, often ignoring their own. The day-to-day pressures and deadlines of practice sometimes manifest themselves into acute difficulties like anxiety, depression or chemical and alcohol abuse/dependence.

Without help in understanding how to deal with these obstacles, families and work can be drastically affected. Furthermore, feelings of helplessness, frustration, shame, guilt, and even disgust can cause the lawyer to shy away from addressing health issues squarely. Rather, it is easier to isolate the unhappy events as an aberration and to hope things will get better. In other words, it is easier to deny that a problem exists.

If you, or someone you know, is experiencing symptoms of depression or if you want additional information on depression or health care referrals, call the Delaware Lawyers Assistance Program (DE-LAP), Carol P. Waldhauser, Executive Director, at (302) 777-0124 or 1-877-24DELAP or e-mail cwaldhauser@de-lap.org for confidential, free information. 

Carol P. Waldhauser is the Executive Director of the Delaware Lawyers Assistance Program and can be reached at cwaldhauser@de-lap.org.



BOOK REVIEW

Reviewed by Richard A. Forsten, Esquire

Behind the Music: *Baby You're a Rich Man: Suing the Beatles for Fun & Profit*

by Stan Soocher (ForeEdge, 2015)

It is no hyperbole to say the Beatles were the greatest musical force of the twentieth century. They were. From their first hit single in 1962 (“Love Me Do”) to the release of their last album (*Let It Be*) eight years later, the Fab Four set a standard for musical excellence, originality and experimentation that remains unmatched. They are the all-time best-selling band in the United States and the world. Yet, as successful as they were as musicians, they also spent a lot of time in litigation — sometimes to the point that one wonders how they found time to create such great music.

In *Baby You're a Rich Man: Suing the Beatles for Fun & Profit*, Professor Stan Soocher provides a glimpse behind the music and offers a history of the various lawsuits and litigation in which the Beatles found themselves. The litigation is wide-ranging, from breach of contract to immigration to copyright infringement. Some of it arose because, in many ways, the Beatles created the modern music industry and so terms, conditions and contracts taken for granted in the industry today were only created, clarified or standardized as a result of the Beatles' success. Some of it arose because of power struggles and the Beatles' displeasure with various managers. And, some of it arose because of sloppy contract terms and

informal arrangements that would prove ripe for conflicting recollections and understandings. But, if there is a common thread, almost all of it arose because there was a lot of money at stake.

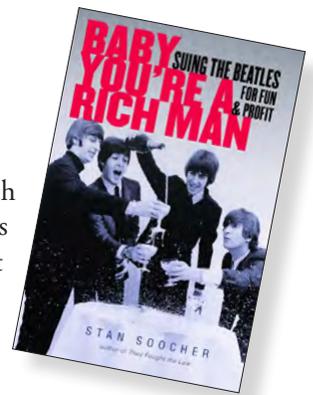
The Beatles' litigation troubles began with their first manager, Brian Epstein. Epstein worked tirelessly for the Beatles and helped make them a worldwide success, but he had never managed a musical act before becoming the Beatles' manager, and so he had something of a steep learning curve. Moreover, no one could foresee the phenomenon of Beatlemania, and so while Epstein's errors might not have made much of a difference to a local band that never achieved stardom, his slightest missteps with the Beatles would be magnified a thousand fold. Epstein's licensing of the Beatles' worldwide merchandising rights led to years of litigation. After Epstein's death, the actions of the Beatles' new manager, Allen Klein, would lead to even more lawsuits. At one point, while George Harrison was being sued for copyright infringement of the song “My Sweet Lord,” Klein bought the rights to the song after liability had been established, but before the trial on damages had begun, so that he could receive the infringement damages!

After the Beatles broke up, George Harrison wrote and recorded “My Sweet

Lord,” which became his first solo hit song. Shortly thereafter, he was sued for copy-

right infringement due to the song's similarity to the early sixties' song “He's So Fine.” A federal judge concluded that Harrison had not knowingly infringed, but had done so subconsciously. At the follow up trial on damages, after learning that Allen Klein (Harrison had kept him on as his manager after the Beatles broke up) had acquired the rights to the song specifically to collect the damages for himself, the same judge limited the damages award to the amount Klein had paid to acquire the rights to the song, and ordered the rights transferred to Harrison. Harrison thus ended up owning the rights to the song he allegedly infringed. Sadly, after the lawsuit, Harrison also stopped listening to music and stopped having music playing in the background at his house, so as to avoid any possible future subconscious infringement.

“My Sweet Lord” was not the only song that led to infringement litigation. In 1970, the Beatles were sued over the song “Come Together,” in which it was alleged that the opening phrase, “Here come old



flat top” infringed upon the line “Here come a flat-top” from the Chuck Berry song “You Can’t Catch Me.” In Berry’s song, though, he used the term “flat-top” to refer to a car, while

Lennon referred to the haircut. Lennon denied any infringement, although during the course of the litigation Lennon admitted that he was familiar with the works of Chuck Berry and considered Berry “one of the original rock and roll poets.” On the eve of trial, the case settled when Lennon agreed to include a rendition of “You Can’t Catch Me” and two other “oldie” rock songs owned by the same publisher on his next album (at the time of the settlement, Lennon was recording a collection of his favorite rock ‘n roll oldies). The release of that album, though, became complicated when legendary music producer Phil Spector, who was working with Lennon on the project, stole the master tapes for leverage in his own dispute with the record company. As a result, Lennon’s next album was not the rock ‘n roll oldies album he had planned, but the album *Walls and Bridges*, which consisted entirely of new compositions (including Lennon’s only #1 U.S. single, “Whatever Gets You Through The Night”) and no “You Can’t Catch Me.” This, of course, led to further litigation over whether Lennon had complied with the terms of the settlement, although the album of oldies, *Rock and Roll*, was released a year later.

Lennon also had to deal with immigration and visa issues. George Harrison organized the Concerts for Bangladesh to raise money for the refugees of the war-torn country. The concerts, film of the concerts, and resulting album were all a huge success, but because Allen Klein had failed to apply for tax-exempt status for the event prior to the concert, the Internal Revenue Service sought taxes on the income, explaining that for all they knew, the money raised might not be going to charity. The British Treasury also sought to tax the income generated by the project in Britain. To this day, the IRS still gets a cut of the income from the Concerts.

“*The Beatles also sued each other. Paul McCartney instituted the litigation that led to the formal dissolution of the Beatles.*”

Allen Klein was not the only manager who ill-served George Harrison. In 1995, Harrison obtained an \$11 million judgment against another manager, only to have that manager file for bankruptcy in 2000. Harrison challenged the bankruptcy filing, but was too ill from cancer treatment to travel to the United States for a deposition, and, as a result, the Bankruptcy Judge ruled in the manager’s favor and dismissed Harrison’s claims — pointing out that Harrison had, only months before, flown to the United States to attend his son’s college graduation. Harrison died from the cancer only a few weeks after the court’s ruling.

The Beatles also sued each other. Paul McCartney instituted the litigation that led to the formal dissolution of the Beatles. And, it was McCartney who, in 2009, sued Klein’s management company, claiming that the company had mishandled monies owed McCartney’s publishing company. That lawsuit was finally resolved in 2014, more than forty years after the Beatles had stopped recording together.

The Beatles’ musical career was unparalleled in its success, but their adventures in litigation can only be described as a long and winding road, albeit an interesting road that makes for interesting reading. ☺

Richard “Shark” Forsten is a Partner with Saul Ewing LLP, where he practices in the areas of commercial real estate, land use, business transactions, and related litigation. He can be reached at rforsten@saul.com.



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A PROFILE IN BALANCE

By James G. McGiffin, Jr., Esquire

Patrick Gallagher

A Mountaineer in the Flatlands

If I aspire to be the best lawyer I can be, I must first try to be the best person I can be. I am fortunate to know many lawyers who have succeeded in their work, in part, because they are excellent people. This column in The Bar Journal will feature an article on one such lawyer. Each featured lawyer will exemplify the art of balance in life. I have learned much from these people. Perhaps readers will also benefit.

- Jim McGiffin

• • •

Dover lawyer Patrick Gallagher always saw himself as a lawyer, but not a Delaware lawyer. It was love that brought him here, and now he loves it here.

Born on a mountaintop in West Virginia (well, in Huntington, anyway), Pat grew up in Beckley, a half-mile-high city (elevation about 2400 feet).¹ He is the only child of parents who are educators. For as long as he can remember, Pat knew he would be a lawyer. Perhaps, he was inspired by watching Perry Mason on TV during summer lunches with his father.

Patrick also knew that he would leave West Virginia. He was interested in living where there is no snow — he had enough of that in the West Virginia mountains. He also had an attraction to a college called Elon, as he had heard a cousin’s husband extol the virtues of that exclusive southern college. His visit to the campus confirmed his inclinations, as he was immediately enamored of the place. While there, Pat founded a chapter of a fraternity, Pi Kappa Phi, and remains close to many of his fraternity brothers.

He wrapped up his Elon experience with a degree in economics and enrolled in the law school at Wake Forest University. Pat’s plan was to practice law in his new home state, but two things upon which he did not plan changed everything.

First, he was unsuccessful in his North Carolina job search. So he repaired to West Virginia and signed on with a large, local firm. The second surprise was that he fell hard for the granddaughter of a Delaware potato farmer. Here is that story.

While at Elon, Pat met Jennifer. She had been dating one of his fraternity brothers, but that was over. Although this sort of thing is usu-

ally not done in the fraternity world, Pat and Jennifer started to see each other at the end of his senior year. It was a dating relationship of short duration. When she returned to Delaware, things ended. Four years later they ran into each other at a homecoming event, and the fire was re-kindled. At this point in time, Pat was back in West Virginia, so he made the eight hour trip to Delaware frequently. He was able to pick up some CLE credits on those long car trips, as the West Virginia Bar allows that audio recordings can count.

Eventually, Pat bit the bullet and moved to Delaware, landing a job with Potter Anderson and Cor-



1. Beckley is the birthplace of Delaware U.S. Senator Tom Carper.

room in corporate litigation. It did not take Pat long to realize that corporate litigation did not suit him, so he relocated to Dover and to the small firm of Grady & Hampton. He married Jennifer soon thereafter.

West Virginia came calling again when a former colleague contacted Pat with an exciting opportunity to join a new firm with great potential. Pat accepted a very attractive offer and let John Grady and Steve Hampton know that he was moving on. As he and Jennifer were packing up the house to move, Pat's new and former colleague called again. The new firm had crumbled. Pat was still welcome to join a surviving organization, but the thrill was gone. So, he and Jennifer decided to remain in Delaware. Pat just had to find a job.

After a few starts and stops, Pat was hired by Curley Dodge & Funk, a Dover firm. To say he is delighted with his present situation is understating the good fortune he has experienced. He now does personal injury and employment law, as well as bankruptcy and some family law.

Pat believes in being part of the solution to problems, and he acts on that belief. An avid cyclist, he has worked on the City of Dover's Bicycling and Pedestrian subcommittee of the City's Safety Advisory and Transportation Committee. These volunteers advocate with the City for ways to improve Dover for those on foot and on bicycles. He is also a member and past president of the Board of Directors of Community Legal Aid Society, Inc. and will serve this year as a state-wide co-chair for the fund raising effort known as the Combined Campaign for Justice.²

Jennifer and Pat are big music fans. They enjoy the live performance of music, and spend some time and energy searching out shows. They have become regular attendees of the Firefly festival in Dover. They saw Pearl Jam close the Spectrum in Philadelphia. They have seen Mumford and Sons, Drive-By Truckers, Rusted Root, and the Allman Brothers Band, among many other acts.

2. Full disclosure: your writer is employed by CLASI and his salary comes, in part, from CCJ.

They often travel to hear one of the spin-off bands spawned by the Grateful Dead (Patrick is probably a legitimate "Deadhead." He has tapes of various live shows in his music collection). They get up to Broadway now and again, and they even stretched themselves a bit and attended a performance of Johann Strauss' operetta, *Die Fledermaus*.

Pat Gallagher's plans have changed a lot since he decided, pre-adolescence, that he would become a lawyer. He has been flexible enough to recognize

good opportunities, resilient enough to bounce back from challenges, and finds himself enjoying his work and in love with his best friend. And, they have a faithful dog, Cadence, to make the picture complete. ☺

James G. McGiffin, Jr. is a Senior Staff Attorney with Community Legal Aid Society, Inc. and a former President of the Delaware State Bar Association. He can be reached at jmcgiffin@declasi.org.

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The Toast and Roast of Rina Marks

Tuesday, March 8, 2016
at the DSBA Conference Center

Many laughs were had at the Toast and Roast of Rina Marks on March 8. After a cocktail reception in the lobby of the Renaissance Centre, with a Welcome by Past President, Yvonne Takvorian Saville, Esquire, and a Toast by President-Elect Miranda D. Clifton, Esquire, the attendees were shocked and delighted as Rina was served a summons to appear in court. Her crime? Reckless Abandonment. With Justice Randy J. Holland presiding over the court in this fictional Land of Oz, Rina was tried...but ultimately found not guilty of the crime. Her attorney, James G. McGiffin Jr., Esquire; Plaintiff's attorney, The Honorable Robert B. Young; and the cast of witnesses: Yvonne Takvorian Saville, Esquire; Richard K. Herrmann, Esquire, Matthew M. Greenberg, Esquire; Benjamin Strauss, Esquire; and Geoffrey Gamble, Esquire, treated the attendees to a trial filled with laughs, song, and memories. Some highlights included Geoffrey Gamble, Esquire, presenting Rina with an official blessing from Pope Francis and Justice Holland presenting Rina with the DSBA honor as an Honorary Lifetime Member as suggested by Past President Victor F. Battaglia Sr., Esquire. The evening concluded with Rina sharing some memories of her own to an audience of over 100 attendees who came to wish her well.





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FRIDAY, JUNE 17, 2016
CHASE CENTER ON THE RIVERFRONT
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2016

CONFERENCE PROGRAM

**SAVE
THE
DATE**

Registration/Breakfast: 7:30 a.m. - 8:45 a.m.

Break/Transition: 8:45 a.m. - 9:00 a.m.

CLE: 9:00 a.m. - 10:30 a.m.

Reception Break: 10:30 a.m. - 10:45 a.m.

CLE: 10:45 a.m. - 12:15 p.m.

Reception Break: 12:15 p.m. - 12:30 p.m.

Annual Meeting: 12:30 p.m. - 1:30 p.m.

Reception: 1:30 p.m. - 3:00 p.m.



POSITIONS AVAILABLE

THE LAW OFFICE OF SUSAN PITTARD WEIDMAN, P.A., a growing Sussex County law firm with offices in Rehoboth Beach, Millville and Millsboro, is seeking an attorney with 2- 5 years experience. Must have an interest in Real Estate, Estate Planning and Probate. If you are a business minded, hard working attorney, who enjoys being part of a team where your efforts are appreciated and rewarded please send a Confidential Resume to susan@spwdelaw.com.

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HECKLER & FRABIZZIO is seeking a Litigation Attorney, candidates with all levels of experience will be considered for this opening. Delaware Bar admission is required. For more information please contact Page Hyson at (302) 573-4811 or physon@hfdel.com.

TRUST & ESTATES ASSOCIATE: Leading Wilmington, Delaware law firm seeks a Trusts & Estates Associate with 1-4 years of experience in estates, gift and generation-skipping transfer tax planning, including drafting and reviewing sophisticated estate planning documents. Candidates should have excellent communication skills (both oral and written) and must be motivated and have the ability to work in a fast-paced, high energy environment. Candidates need to demonstrate an ability to handle independently a significant number of matters of varying complexity and an ability to work under pressure. LLM degree in tax-related discipline preferred. Delaware Bar is not required, but successful candidate would be required to take the Delaware Bar exam at the first opportunity. Please submit a cover letter, resume and transcript to peet@rlf.com or via U.S.Mail, Joni L. Peet, Manager of Legal Recruitment, Richards, Layton & Finger, 920 N. King Street, Wilmington, DE 19801.

BANKRUPTCY ATTORNEY: We are seeking an associate attorney with one to four years of bankruptcy and evictions experience to attend hearings. Responsible for contested bankruptcy litigation matters. DE Bar. Wilmington, DE. Interested candidates should contact Michelle Hamilton at mhamilton@orlansgroup.com.

TRUSTS & ESTATES: Morris James LLP seeks an attorney to join its substantial tax, trusts, estates and business practice. Minimum 3 to 5 years' law firm or trust counsel experience is required; LLM preferred but other qualified candidates will be considered. This position requires superior communication, drafting and research skills, with the ability to work both independently and as a team member. Primary practice areas include estate planning - from basic to sophisticated - estate administration, and income and transfer tax planning, with significant exposure to Delaware trust practice, S corporations, LLCs and business succession planning. Morris James is consistently rated among the best places to work in Wilmington, providing a collegial atmosphere and excellent staff support. This position offers unlimited potential for the right person. Email résumé to: Mary M. Culley, Esquire; mculley@morrisjames.com.

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OF NOTE

Condolences to the family of **William R. Hitchens, Jr.**, who died on February 27, 2016.

Condolences to the family of **The Honorable Henry Ridgely Horsey**, who died on March 3, 2016.

Congratulations to **Yvonne Takvorian Saville, Esquire**, who was named Alumna of the Year at the Widener University Delaware Law School's Alumni Awards Ceremony on March 31, 2016.

If you have an item you would like to submit for the Of Note section, please contact Rebecca Baird at rbaird@dsba.org. 

-DISCIPLINARY ACTIONS-

INTERIM SUSPENSION

Supreme Court No. 81 2016

Effective Date: February 22, 2016

By Order dated February 22, 2016, the Delaware Supreme Court suspended S. Harold Lankenau, Esquire from the practice of law pending the disposition of disciplinary proceedings. During the period of interim suspension, Mr. Lankenau is prohibited from having any contact with clients, prospective clients, witnesses or prospective witnesses when acting as a paralegal, legal assistant or law clerk under the supervision of a member of the Delaware or Pennsylvania Bars. 

BULLETIN BOARD

ADVERTISING INFORMATION

Bulletin board rates are \$50 for the first 25 words, \$1 each additional word. Additional features may be added to any Bulletin Board ad for \$10 per feature.

Submit the text of the Bulletin Board ad and payment to rbaird@dsba.org. For more information, contact Rebecca Baird at (302) 658-5279.

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A Tour of Spain

IN THE CRADLE OF LIBERTY

Philly's top two attractions in my book are its art and its food. Today I enjoyed both with a Spanish flair. First, Vincent, our friends, and I visited the Barnes Foundation to view the exhibit "Picasso: The Great War, Experimentation and Change" and then brunch at Jose Garces Trading Company.

As the Picasso exhibit runs through May 9th, you still have time to take a "tour of Spain" on a Saturday or Sunday this spring. The exhibition contains about fifty works, including paintings, drawings and costumes designed for the Ballets Russes. One of my favorite pieces was the velvety cubist horse costume for two dancers designed by Picasso for the ballet *Parade*. The show effectively highlights Picasso's shifts between cubism and classicism during the years surrounding World War I and examines the causes, including changes in his personal life and the negative political connotations of cubism.

After "Picasso," I suggest you spend some time in the permanent galleries brimming with Modiglianis, Renoirs (there are over 180 – the largest collection in the world) and Matisses. One can never tire of the Barnes as it is impossible to absorb every component of every wall ensemble during one visit. The compositions of metalworks, paintings and textiles arranged in floor to ceiling patterns offer an experience unlike any other museum.

To celebrate Picasso and the Barnes, we headed across town to Jose Garces Trading Company, which describes itself as a European-style café and bar focusing on Italian, Spanish, and French cuisine. We were happily seated at a bar-height table toward the back, away from the bustle at the center of the restaurant. Our group began with two starters. The house-made mozzarella with olive oil, Maldon salt, and cracked pepper was our favorite as the cheese was served warm – ideal for spreading atop the crusty, airy bread. We also enjoyed the country pâté with roman mustard, cornichons and baguette points. While the crunch of the pistachios was pleasant, the pâté was not as firm as I like.

For our mains courses, two of us ordered Croque Madames with prosciutto cotto, Emmentaler, Mornay sauce and a fried egg. We agreed that this dish was indeed a rich comfort food, but a bit too bready. The mixed green salad with a mustard vinaigrette was a refreshing counterbalance to the sandwich. The GTC Burger with mushroom duxelle, Tomme de Savoie cheese and dijon aioli received positive ratings for the creative toppings. And, although the baked eggs in a spicy tomato stew over polenta alongside guanciale, Manchego, and black olive toasts had some of the Spanish elements we were seeking, the dish would have benefitted from more of a "kick."

We passed on dessert as we were full from the rather heavy brunch dishes; however, we decided to purchase some of the house-made olive oils and a bottle of the tangy lemongrass mint vinegar to cook with at home. All in all, while the food was flavorful, we were hoping for more Spanish ingredients to celebrate Picasso and his work.

In fact, as I am writing, I wish I had made a flan before we left for Philly this morning. This rich yet light "postre" would hit the spot.



Flan

Ingredients:

- 5 eggs
- 14 ounce can of sweetened condensed milk
- 1 cup of milk
- 1 teaspoon of vanilla
- 1 cup of sugar

Preheat the oven to 350 degrees. In a mixing bowl, beat the eggs then mix in the condensed milk, milk, and vanilla (this is the flan mixture). Heat a saucepan over medium-low heat and add the sugar. Using a wooden spoon, stir the sugar until it melts and turns a light brown color (this is the caramel). Remove the saucepan from the heat and pour the caramel into a greased 9 inch round pie plate. Let the caramel cool for a few minutes. Pour the flan mixture into the mold and cover tightly with aluminum foil. Place the mold in a larger pan and add hot water so that it comes half way up the side of the mold. Bake for about 1 hour. To test, insert the tip of a knife in the flan. If the knife comes out clean, then the flan is finished. Chill the flan before serving. To serve, place fresh berries on the side of the flan.

Flan is delicious, but: "Love is the greatest refreshment in life." - Picasso 🍷

Susan E. Poppiti is a mathematics teacher at Padua Academy High School and managing member and cooking instructor for La Cucina di Poppiti, LLC and can be reached at spoppiti@hotmail.com. Other recipes and cooking tips are available on Susan's food blog at www.cucinadipoppiti.com.

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Ms. Readinger is an associate in Morris James' Corporate & Commercial Litigation group focusing on dealing with the challenges associated with electronic discovery.

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IS PLEASED TO ANNOUNCE

LAURA G. READINGER

HAS BEEN ADMITTED TO PRACTICE LAW IN DELAWARE

Morris James is pleased to announce that Laura G. Readinger was admitted to the Delaware Bar on March 2, 2016. She provides effective and efficient project management solutions to clients in what is a complex and continually changing area of litigation.

Ms. Readinger is also admitted to practice law in Ohio, Pennsylvania, and New York and is currently serving as the Vice President of the Hispanic Bar Association of Pennsylvania and as a board member of the Hispanic Bar Association of Pennsylvania Legal Education Fund.

She can be reached at **302-888-6872** or lreadinger@morrisjames.com.